

REMARKS

The Examiner is requiring restriction to one of the following groups:

Group I: Claims 1-8, drawn to a process; and

Group II: Claim 9, drawn to an apparatus.

Applicants have elected Group I, claims 1-8, drawn to a process, with traverse.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples, to support any conclusion in regard to patentable distinctness (M.P.E.P. § 803). Applicants respectfully traverse the restriction requirement on the grounds that the Examiner has not carried the burden of providing sufficient reason and/or examples to support any conclusion that the claims of the restricted groups are patentably distinct.

The Examiner has categorized the relationships between Groups I and II as process and apparatus for its practice. Patentable distinctness may be shown if either or both of the following can be shown: (A) that the process as claimed can be practiced by another and materially different apparatus or by hand, or (B) the apparatus as claimed can be used to practice another and materially different process (M.P.E.P. § 806.05(e)). The Examiner asserts that the apparatus (system) as claimed can be practiced by another materially different process, such as etching metal instead of a silicon nitride film.

However, the Examiner's assertion does not meet the requirements under § 806.05(e), since etching metal instead of silicon nitride film is not evidence that the claimed system can be used to practice "**another and materially** different process" (emphasis added).

Specifically, under the Examiner's analysis, the process of "etching" would still be involved for the metal. The Examiner has not shown or explained how merely substituting the silicon

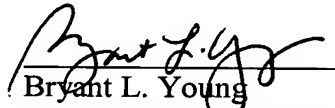
Application No. 10/661,662
Reply to Office Action of July 6, 2005

nitride film with the metal materially changes the process of "etching" recited in the claimed invention. In addition, the Examiner has not shown or explained how the claimed system, which comprises units specifically for the process of "etching silicon nitride films", would be effective for metals in general. As such, the Examiner's reasoning is merely a restatement of the Examiner's conclusion that the two groups are patentably distinct, which is improper.

Accordingly, for at least the reasons presented above, Applicants submit that the Examiner has failed to meet the burden necessary to sustain the restriction requirement. Withdrawal of the requirement is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon


Bryant L. Young
Registration No. 49,073

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)